

## INITIAL STATEMENT OF REASONS

The regulatory changes proposed fall into several subject categories described below. Some regulation sections are included in more than one category. Following the discussion of the various categories of rulemaking, the effect on each regulation section included in the proposed changes will be summarized.

### MMBA Petition for Board Review

Sections 60000 through 60070 (Chapter 5, Subchapter 1) currently provide for a procedure whereby a party to a determination by a public agency concerning an election, unit determination or other representation matter can request Board review of the determination. This process has proven to be redundant and unnecessary. There have only been a few petitions filed and frequently the party also files an unfair practice charge based on the same conduct. When regulations were adopted for the Trial Court Act and Court Interpreter Act, this process was not included for those jurisdictions. The relevant regulatory changes involve repeal of sections 60000, 60010, 60020, 60030, 60035, 60040, 60050 and 60070, and conforming amendments to sections 32500, 61000, 61080, 61105, 61185 and 61400.

### Standardizing the filing of alleged violations of the statutes as unfair practice charges and elimination of separate procedures for financial statements, public notice complaints and petitions for board review

Consistent with the proposed deletion of the MMBA Petition for Board Review process, the regulatory changes being considered under this category envision one process – the unfair practice charge process set forth at section 32602 et seq. – for all alleged violations of the statutes administered by PERB, and the elimination of all other processes that are presently used only for certain types of alleged violations. In addition to the MMBA Petition for Board Review process, the Board's current regulations provide for separate processes regarding alleged violations of public notice requirements and financial reporting requirements. The proposed changes would establish a more uniform process. The relevant regulatory changes involve repeal of sections 32125, 32900, 32910, 32915, 32920, 32925, 32935, 32940, and 32950, and amendments to sections 32350, 32602 and 32615. In addition, the reference citations are amended for sections 32604, 32605, 32607, 32609, 32621, 32625, 32630, 32635, 32640, 32644, 32647, 32648, 32649, 32650, 32680, and 32690, consistent with the revised scope of application of these sections.

### Applicability of PERB Representation Regulations to MMBA Parties

When PERB first adopted regulations, in 2001, describing representation procedures under the MMBA, the statute was silent on whether such regulations were permissible. Section 61000, as initially adopted, provided that the regulations were applicable only if adopted by a local agency as its own rules or where, in a particular case, all parties agreed to be bound by them. PERB is not aware of any agency that has adopted PERB's rules, and in only a very few instances have parties elected to be bound by PERB rules. The MMBA was later amended (Chapter 215, Statutes of 2003) to expressly provide PERB with the authority to adopt

representation rules where a local agency does not have rules. Section 61000 was amended to conform to the statutory change. However, the language regarding the applicability of PERB rules where the employer adopted them or the parties agree to use them was not deleted. The language about voluntary submission to PERB rules is now unnecessary, given the statutory change. Thus, the proposed regulatory changes include an amendment to section 61000 to limit the applicability of the representation regulations to the circumstance expressed in the MMBA. This approach is consistent with the rules adopted in 2004 under the Trial Court Act (section 81000) and Court Interpreter Act (section 91000), based on statutory provisions regarding PERB's authority that are identical to that found in the MMBA.

#### Adding reference to MMBA Section 3509.5 where applicable

Following the amendment to the MMBA that added Government Code section 3509.5 (Chapter 1137, Statutes of 2002), the Board's regulations were amended to add appropriate references to the new section. However, sections 32155, 32325, 32400, 32500 and 32980 were not amended previously and the proposed regulatory changes address their omission.

#### MMBA statute of limitations

Section 32620 provides, in relevant part in subsection (b)(5), that an unfair practice charge shall be dismissed "if it is determined that a complaint may not be issued in light of Government Code Sections 3514.5, 3541.5, 3563.2, 71639.1(c) or 71825(c)." This provision incorporates the six months statute of limitations expressed by the Dills Act, EERA, HEERA, the Trial Court Act, and the Court Interpreter Act, respectively. The regulations do not include a comparable provision with respect to charges filed under the MMBA as the statute itself does not include an express provision establishing a statute of limitations. However, in Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board (2005) 35 Cal.4th 1072 [29 Cal.Rptr.3d 234], the California Supreme Court determined that the statute of limitations under the MMBA, as enforced by PERB, is six months. Thus, amendments to section 32620 are proposed to include appropriate reference to this basis for dismissal of an unfair practice charge filed under the MMBA.

#### Incorporating reference to PUC section 99561.2

Likewise, a potential basis for dismissal of a charge filed under TEERA is missing in the text of section 32620, even though PUC section 99561.2 was previously included in the Authority and Reference for the section. The proposed rulemaking changes include further amendment to section 32620 to correct the omission.

#### Unit Modification Petition issues

There are three areas of change proposed regarding unit modification procedures. First is the proposed elimination of a requirement in the regulations that parties use a PERB form for such filings. Rather, the regulations (sections 32781, 61450, 81450, and 91450) would describe what information must be provided to PERB in order to pursue a unit modification.

Second, the Board is proposing to eliminate ambiguity and add clarity regarding when majority proof of support is required for a petition that seeks to add unrepresented positions to a unit. Section 32781(e), and comparable provisions in sections 32781, 61450, 81450, and 91450, state that PERB “may require” such support, but the regulations do not provide criteria for when PERB “should” require support. Use of a standard whereby support was required if the positions to be added equal 10 percent or more of the number of employees in the established unit was approved in a Board decision (State of California, Department of Personnel Administration (1989) PERB Decision No. 776-S) but never adopted as “the standard” by the Board. The proposed amendments to sections 32781, 61450, 81450, and 91450 would incorporate the 10 percent standard and make it mandatory.

Third, the Board is also proposing to provide for a circumstance where only 30 percent support would be required for a unit modification petition. The fact pattern where this proposed change would be applicable involves a union petitioning to create and become the exclusive representative for a unit of currently unrepresented employees, and an exclusive representative of a separate unit that wishes, instead, to have the employees added to its unit. Under these circumstances, it would be appropriate to have the exclusive representative demonstrate support among the unrepresented employees when the petitioning union has already demonstrated support (normally a majority). The 30 percent level is provided for as it is the most common level of support required for an employee organization to intervene on a request for recognition or qualify for the ballot in a representation election. This proposed change also affects sections 32781, 61450, 81450, and 91450.

#### Calculation of Last Day to File in Window Period Filings (see Government Code section 6800)

Government Code section 6800 reads: “The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.” As presently written, sections 32130(b), 33020, 40130, 51026, 61010, 71026, 81010, and 91010 conflict with this statutory provision, and the proposed changes would delete the language that is in conflict.

#### On-Line Filing of Unfair Practice Charges

Proposed new section 32613 and conforming changes to section 32135 would provide, as an alternative to filings by mail or facsimile transmission, for the filing of unfair practice charges through an on-line mechanism accessible on the PERB website. This pilot program is intended to provide parties with a speedy and reliable means to file charges that takes advantage of technological developments and resources.

#### Clarification of Meaning of Regulation 32135 (Filing)

The current language of this section is ambiguous in that it arguably means that a filing is timely only if filed on the last day set for filing. This construction was not intended and the suggested amendments to section 32135(a) and (b) are intended to clarify the meaning of the section.

### Redefining Service on parties to include fax transmissions and clarification of proof of service requirements

Current regulations only allow a party to accomplish service by fax when the filing is made by fax. The proposed changes would allow for service by fax of any document that requires service. In addition, a review of section 32140 disclosed aspects that are inaccurate or incomplete, as well as difficult for a party to understand. The language has been revised in this proposal in an attempt to spell out in plainer and simpler language the requirements for service, and to include reference to all forms of acceptable service. The proposed changes include amendments to sections 32135(c) and 32140.

### Clarification of 5 day extension rule

The proposed change to section 32130(c) is intended to clarify that the five day extension rule does not apply where PERB serves a document by fax instead of mail. The goal is to both improve PERB's productivity and efficiency and to clarify the filing deadlines for parties.

### Repeal of Section 32646 and clarification of appeal rights after rulings on motions

Section 32646, concerning the opportunity of a party to seek dismissal of a complaint on various grounds and the process for such motions, is unnecessary as it is duplicative of rights and processes that are established in other regulation sections (see 32190 and 32200).

### Miscellaneous Grammatical or Technical Corrections

Non-substantive changes are proposed affecting sections 32450, 61480, 61620.

### Section by Section Summary

Section 32125 provides for a process to compel compliance with the financial reporting requirements imposed on exclusive representatives under EERA, the Dills Act, HEERA and TEERA. The proposed changes provide for such complaints to be filed and processed as unfair practice charges, like other alleged violations of a statute, and this section would be repealed.

Section 32130 concerns the computation of periods of time under PERB regulations. Three changes to this section are proposed. First, an exception to the general rule applicable to situations where the last date to file a document falls on Saturday, Sunday, or a holiday would be repealed as the exception is inconsistent with the provisions of Government Code section 6800. Second, subsection (c) would be clarified to specify that the normal five day extension of time applicable where a response is made to documents served by mail would not apply where documents are served in person or by facsimile transmission. Finally, the reference citations are corrected to delete reference to provisions of the Code of Civil Procedure, as PERB lacks authority to implement, interpret or make specific those provisions of law, and relevant sections of statutes administered by PERB are cited instead.

Section 32135 concerns filing definitions and requirements, and the proposed changes address three issues. First, subsections (a) and (b) are modified to clarify currently ambiguous language. The present language can be read to mean that a document is considered “filed” only if received on the last day set for filing. This construction and meaning was not intended, and the language is modified to make clear that a document is “filed” upon receipt by the appropriate office during the regular business day. Second, subsection (c) presently allows a party to establish service on other parties of a document filed with PERB by facsimile transmission only where the document is filed by facsimile transmission. The proposed change to this subsection would allow service to be accomplished by facsimile transmission without regard to the manner in which the document is delivered to PERB. Finally, subsections (b) and (c) would be amended to conform to the provision for on-line filing of unfair practice charges, consistent with proposed new section 32613.

Several changes are proposed for Section 32140, concerning service requirements. First, consistent with the proposed change described above to Section 32135(c), the amendments to this section would allow a party to serve a document by facsimile transmission without regard to the manner in which the document is delivered to PERB. Second, the language is amended to list in plain English the information requirements for “proof of service” rather than by reference to provisions of the Code of Civil Procedure or a format included in the present regulation. This section would also be amended to eliminate unnecessary or redundant provisions.

Section 32155 concerns the disqualification of a Board agent or Board Member from hearing a case. The regulation includes reference to circumstances where an aggrieved party may raise the issue in a writ of extraordinary relief. The proposed changes add MMBA section 3509.5 to the text and reference citations, consistent with the addition of this section to the statute in 2002, providing for the filing of such writs in cases arising under the MMBA.

Section 32190 concerns the filing and adjudication of motions by parties. The proposed changes would delete language referencing Section 32646, consistent with the proposal (discussed below) to repeal Section 32646. However, a cross-reference to Section 32360 would be added in order to clarify the inter-relationship of the two sections.

Section 32325 concerns the remedial power of the Board. The reference citations are updated to reflect the addition of section 3509.5 to the MMBA (Chapter 1137, Statutes of 2002).

Section 32350 provides a definition of administrative decision. The proposed change deletes language referencing determinations made on a public notice complaint, consistent with other proposals in this rulemaking package to eliminate a separate public notice complaint process and instead treat such alleged violations as an unfair practice charge.

Section 32400 concerns administrative remedies. The reference citations are updated to reflect the addition of section 3509.5 to the MMBA (Chapter 1137, Statutes of 2002).

Section 32450 sets forth the requirements for filing a request for injunctive relief. One grammatical correction is proposed in subsection (b), deleting a comma.

Section 32500 concerns the review by the Board of decisions in representation cases. A cross-reference in subsection (a) would be amended consistent with the proposal to the regulations providing for filing MMBA petitions for Board Review (see discussion below, beginning at Section 60000). The reference citations are updated to reflect the addition of section 3509.5 to the MMBA (Chapter 1137, Statutes of 2002).

Section 32602 concerns how PERB processes alleged violations of the statutes within its jurisdiction. Presently, this section provides that such allegations will be processed as unfair practice charges “except as otherwise provided in these regulations.” That quoted phrase would be deleted from, and other necessary provisions added to, this section, consistent with other proposals to repeal Sections 32125, 32900 et seq., and 60000 et seq. and to treat all alleged violations as unfair practice charges. The reference citations would also be updated consistent with this policy.

Section 32604 defines employee organization unfair practices under the MMBA. Consistent with the policy discussed above, to treat all alleged violations of the statute as unfair practice charges, the reference citations for this section would be amended.

Section 32605 concerns the number of copies required to be filed for an unfair practice charge. The reference citations are updated consistent with the proposal to treat all alleged violations as unfair practice charges.

Section 32607 defines employee organization unfair practices under the Trial Court Act. The reference citations are updated consistent with the proposal to treat all alleged violations as unfair practice charges.

Section 32609 defines employee organization unfair practices under the Court Interpreter Act. The reference citations are updated consistent with the proposal to treat all alleged violations as unfair practice charges.

Proposed new section 32613 provides definitions and requirements that enable the on-line or electronic filing of unfair practice charges by parties.

Section 32615 describes the required contents of an unfair practice charge. The language of the section and its reference citations are updated consistent with the proposal to treat all alleged violations as unfair practice charges.

Section 32620 concerns the processing of an unfair practice charge. The language and reference citations are amended to reflect the California Supreme Court’s decision, in Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board (2005) 35 Cal.4th 1072 [29 Cal.Rptr.3d 234], holding the statute of limitations under the MMBA is six months. The text of subsection (b)(5) is also amended to reference the bases for dismissal of a charge contained in PUC section 99561.2; this statutory provision was previously added to the reference citations but inadvertently omitted from the text of the

section. The reference citations are also updated consistent with the proposal to treat all alleged violations as unfair practice charges.

Section 32621 concerns the filing of amendments to unfair practice charges. The reference citations are updated consistent with the proposal to treat all alleged violations as unfair practice charges.

Section 32625 concerns the withdrawal of an unfair practice charge. The reference citations are updated consistent with the proposal to treat all alleged violations as unfair practice charges.

Section 32630 concerns the dismissal of or refusal to issue a complaint in an unfair practice charge case. The reference citations are updated consistent with the proposal to treat all alleged violations as unfair practice charges.

Section 32635 concerns review by the Board itself of charge dismissals. The reference citations are updated consistent with the proposal to treat all alleged violations as unfair practice charges.

Section 32640 concerns the issuance of a complaint in an unfair practice charge case. The reference citations are updated consistent with the proposal to treat all alleged violations as unfair practice charges.

Section 32644 concerns the filing by a respondent of an answer to a complaint. The reference citations are updated consistent with the proposal to treat all alleged violations as unfair practice charges.

Section 32646 addresses various defenses to a complaint that a respondent may raise and a process for seeking dismissal of a complaint and charge. The repeal of this section is proposed, as its provisions are duplicative of other regulation sections.

Section 32647 concerns the amendment of a complaint before a hearing. The reference citations are updated consistent with the proposal to treat all alleged violations as unfair practice charges.

Section 32648 concerns the amendment of a complaint during a hearing. The reference citations are updated consistent with the proposal to treat all alleged violations as unfair practice charges.

Section 32649 provides for the filing of an answer to an amended complaint. The reference citations are updated consistent with the proposal to treat all alleged violations as unfair practice charges.

Section 32650 provides for the conduct of informal, settlement conferences regarding complaints issued in unfair practice cases. The reference citations are updated consistent with the proposal to treat all alleged violations as unfair practice charges.

Section 32680 provides for the conduct of formal hearings concerning complaints issued in unfair practice cases. The reference citations are updated consistent with the proposal to treat all alleged violations as unfair practice charges.

Section 32690 requires the Board to serve a notice of hearing in unfair practice cases and allows for the issuance of a prehearing memorandum setting forth specified information. The reference citations are updated consistent with the proposal to treat all alleged violations as unfair practice charges.

Section 32781 concerns the circumstances, for parties under EERA, the Dills Act, HEERA and TEERA, under which a unit modification petition may or must be filed and the requirements for filing a petition. Three changes are proposed. First, the current regulation requires a petition to be filed on a form provided by the Board. The amended regulation, instead, would specify the information that must be included on or with a petition. Second, the current language provides that PERB “may” require proof of majority support where a petition seeks to add unrepresented employees to an established unit, but does not specify the conditions under which the proof of support will or should be required. While the Board itself, in State of California, Department of Personnel Administration (1989) PERB Decision No. 776-S, approved the use of a standard whereby support was required where the positions to be added equaled 10 percent or more of the number of employees in the established unit, the Board has never adopted, in case law or regulation, a specific standard. The proposed change would mandate a requirement of majority support whenever a proposed addition of positions to a unit would increase the unit size by ten percent or more. Finally, the proposed amendments would add a requirement of at least thirty percent employee support in circumstances where an incumbent union seeks to add positions to its unit that are also the subject of a petition for representation by another employee organization and the petitioning organization has demonstrated the requisite level of support for its petition (usually majority support). This requirement would be applicable without regard to the effect of the unit modification petition on the size of the established unit, and is consistent with the level of support required for other types of petitions, including interventions on requests for recognition.

Section 32900 requires EERA and HEERA employers to promulgate a local policy to implement Government Code sections 3547 and 3547.5 (EERA) and Government Code section 3595 (HEERA). Repeal of this section is proposed as it merely repeats what the statutes require, and is unnecessary.

Section 32910 provides for the filing of a complaint alleging that an employer or exclusive representative, under the Dills Act, EERA, HEERA or TEERA, has failed to comply with the applicable public notice requirements. Repeal of this section is proposed, consistent with the proposal, discussed above concerning Section 32602, to treat all alleged violations as unfair practice charges.

Section 32915 describes the required contents of a public notice complaint filed pursuant to section 32910. Repeal of this section is proposed, consistent with the proposal, discussed above concerning Section 32602, to treat all alleged violations as unfair practice charges.



Section 32920 concerns the processing of a public notice complaint. Repeal of this section is proposed, consistent with the proposal, discussed above concerning Section 32602, to treat all alleged violations as unfair practice charges.

Section 32925 concerns review by the Board of determinations and dismissals issued regarding public notice complaints. Repeal of this section is proposed, consistent with the proposal, discussed above concerning Section 32602, to treat all alleged violations as unfair practice charges.

Section 32935 provides for the conduct of informal, settlement conferences regarding public notice complaints. Repeal of this section is proposed, consistent with the proposal, discussed above concerning Section 32602, to treat all alleged violations as unfair practice charges.

Section 32940 allows for the withdrawal of public notice complaints. Repeal of this section is proposed, consistent with the proposal, discussed above concerning Section 32602, to treat all alleged violations as unfair practice charges.

Section 32950 provides for the filing of exceptions with the Board regarding decisions issued in public notice complaints following the conduct of a formal hearing. Repeal of this section is proposed, consistent with the proposal, discussed above concerning Section 32602, to treat all alleged violations as unfair practice charges.

Section 32980 concerns compliance with final Board orders. The reference citations are updated to reflect the addition of section 3509.5 to the MMBA (Chapter 1137, Statutes of 2002).

Section 33020 defines the term “window period” for purposes of petitions filed under the EERA. Government Code section 6800 reads: “The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.” As presently written, sections 32130(b), 33020, 40130, 51026, 61010, 71026, 81010, and 91010 conflict with this statutory provision, and the proposed changes would delete the language that is in conflict.

Section 40130 defines the term “window period” for purposes of petitions filed under the Dills Act. Government Code section 6800 reads: “The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.” As presently written, sections 32130(b), 33020, 40130, 51026, 61010, 71026, 81010, and 91010 conflict with this statutory provision, and the proposed changes would delete the language that is in conflict.

Section 51026 defines the term “window period” for purposes of petitions filed under HEERA. Government Code section 6800 reads: “The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.” As presently written, sections 32130(b), 33020, 40130,

51026, 61010, 71026, 81010, and 91010 conflict with this statutory provision, and the proposed changes would delete the language that is in conflict.

Section 60000, and the sections following within Subchapter 1 of Chapter 5, provide for the filing of a petition for Board review of determinations made by a public agency under its local rules concerning unit determination, representation, recognition or election matters. This process has been seldom used since its adoption in July 2001, and in those cases the filing party often also filed an unfair practice charge. In many cases, parties elected to file an unfair practice charge instead of filing pursuant to this section. Based on this experience, the Board did not adopt a similar process when regulations were promulgated in 2004 with respect to the Trial Court Act and Court Interpreter Act jurisdictions, where employers, as under the MMBA, adopt and administer local rules concerning unit determinations, representation, recognition and elections. Consistent with the approach taken under the Trial Court Act and Court Interpreter Act, as well as with the proposal to treat all alleged violations as unfair practice charges (see earlier discussion of sections 32125, 32910 and 32602), the Board now proposes to repeal Subchapter 1 of Chapter 5, including Section 60000.

Section 60010 concerns the investigation of petitions for Board review filed under section 60000. Consistent with the approach taken under the Trial Court Act and Court Interpreter Act, as well as with the proposal to treat all alleged violations as unfair practice charges (see earlier discussion of sections 32125, 32910 and 32602), the Board now proposes to repeal Subchapter 1 of Chapter 5, including Section 60010.

Section 60020 allows for the withdrawal of a petition for Board review filed under section 60000. Consistent with the approach taken under the Trial Court Act and Court Interpreter Act, as well as with the proposal to treat all alleged violations as unfair practice charges (see earlier discussion of sections 32125, 32910 and 32602), the Board now proposes to repeal Subchapter 1 of Chapter 5, including Section 60020.

Section 60030 provides for the conduct of informal conferences regarding petitions for Board review filed under section 60000. Consistent with the approach taken under the Trial Court Act and Court Interpreter Act, as well as with the proposal to treat all alleged violations as unfair practice charges (see earlier discussion of sections 32125, 32910 and 32602), the Board now proposes to repeal Subchapter 1 of Chapter 5, including Section 60030.

Section 60035 provides for the issuance of administrative decisions without a hearing concerning petitions filed under section 60000. Consistent with the approach taken under the Trial Court Act and Court Interpreter Act, as well as with the proposal to treat all alleged violations as unfair practice charges (see earlier discussion of sections 32125, 32910 and 32602), the Board now proposes to repeal Subchapter 1 of Chapter 5, including Section 60035.

Section 60040 provides for the issuance of a notice of hearing in matters arising under section 60000. Consistent with the approach taken under the Trial Court Act and Court Interpreter Act, as well as with the proposal to treat all alleged violations as unfair practice charges (see earlier discussion of sections 32125, 32910 and 32602), the Board now proposes to repeal Subchapter 1 of Chapter 5, including Section 60040.

Section 60050 concerns the conduct of hearings and issuance of proposed decisions in matters arising under section 60000. Consistent with the approach taken under the Trial Court Act and Court Interpreter Act, as well as with the proposal to treat all alleged violations as unfair practice charges (see earlier discussion of sections 32125, 32910 and 32602), the Board now proposes to repeal Subchapter 1 of Chapter 5, including Section 60050.

Section 60070 provides for procedures before the Board itself in matters arising under section 60000. Consistent with the approach taken under the Trial Court Act and Court Interpreter Act, as well as with the proposal to treat all alleged violations as unfair practice charges (see earlier discussion of sections 32125, 32910 and 32602), the Board now proposes to repeal Subchapter 1 of Chapter 5, including Section 60070.

Section 61000 concerns the application of the representation procedures set forth in sections 61000 through 61630 to parties under the MMBA. When PERB first adopted regulations, in 2001, describing representation procedures under the MMBA, the statute was silent on whether such regulations were permissible. Section 61000, as initially adopted, provided that the regulations were applicable only if adopted by a local agency as its own rules or where, in a particular case, all parties agreed to be bound by them. PERB is not aware of any agency that has adopted PERB's rules, and in only a very few instances have parties elected to be bound by PERB rules. The MMBA was later amended (Chapter 215, Statutes of 2003) to expressly provide PERB with the authority to adopt representation rules where a local agency does not have rules. Section 61000 was amended to conform to the statutory change. However, the language regarding the applicability of PERB rules where the employer adopted them or the parties agree to use them was not deleted. The language about voluntary submission to PERB rules is now unnecessary, given the statutory change. Thus, the proposed regulatory changes include an amendment to section 61000 to limit the applicability of the representation regulations to the circumstance expressed in the MMBA. This approach is consistent with the rules adopted in 2004 under the Trial Court Act (section 81000) and Court Interpreter Act (section 91000), based on statutory provisions regarding PERB's authority that are identical to that found in the MMBA. An additional change to this section conforms a cross-reference to reflect the proposed repeal of Subchapter 1 of Chapter 5.

Section 61010 defines the term "window period" for purposes of petitions filed under the MMBA. Government Code section 6800 reads: "The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded." As presently written, sections 32130(b), 33020, 40130, 51026, 61010, 71026, 81010, and 91010 conflict with this statutory provision, and the proposed changes would delete the language that is in conflict.

Section 61080 concerns the conduct of elections and eligibility to appear on a ballot in matters arising under the MMBA. The proposed change to this section conforms a cross-reference to reflect the proposed repeal of Subchapter 1 of Chapter 5.

Section 61105 concerns ballots used in elections conducted under the MMBA. The proposed change to this section conforms a cross-reference to reflect the proposed repeal of Subchapter 1 of Chapter 5.

Section 61185 concerns the certification of election results in matters arising under the MMBA. The proposed change to this section conforms a cross-reference to reflect the proposed repeal of Subchapter 1 of Chapter 5.

Section 61400 concerns the filing of severance petitions under the MMBA. The proposed change to this section conforms a cross-reference to reflect the proposed repeal of Subchapter 1 of Chapter 5.

Section 61450 concerns the circumstances, for parties under the MMBA, under which a unit modification petition may or must be filed and the requirements for filing a petition. Two changes are proposed. First, the current language provides that PERB “may” require proof of majority support where a petition seeks to add unrepresented employees to an established unit, but does not specify the conditions under which the proof of support will or should be required. While the Board itself, in State of California, Department of Personnel Administration (1989) PERB Decision No. 776-S, approved the use of a standard whereby support was required where the positions to be added equaled 10 percent or more of the number of employees in the established unit, the Board has never adopted, in case law or regulation, a specific standard. The proposed change would mandate a requirement of majority support whenever a proposed addition of positions to a unit would increase the unit size by ten percent or more. In addition, the proposed amendments would add a requirement of at least thirty percent employee support in circumstances where an incumbent union seeks to add positions to its unit that are also the subject of a petition for representation by another employee organization and the petitioning organization has demonstrated the requisite level of support for its petition (usually majority support). This requirement would be applicable without regard to the effect of the unit modification petition on the size of the established unit, and is consistent with the level of support required for other types of petitions, including interventions on requests for recognition.

Section 61480 concerns the investigation and resolution of petitions filed under section 61450. One grammatical correction is proposed in subsection (b), deleting the numbering of a subparagraph where the preceding clauses are not numbered.

Section 61620 concerns the conduct of agency fee rescission elections under the MMBA. The proposed change to this section corrects an internal cross-reference.

Section 71026 defines the term “window period” for purposes of petitions filed under TEERA. Government Code section 6800 reads: “The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.” As presently written, sections 32130(b), 33020, 40130, 51026, 61010, 71026, 81010, and 91010 conflict with this statutory provision, and the proposed changes would delete the language that is in conflict.

Section 81010 defines the term “window period” for purposes of petitions filed under the Trial Court Act. Government Code section 6800 reads: “The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.” As presently written, sections 32130(b), 33020, 40130, 51026, 61010, 71026, 81010, and 91010 conflict with this statutory provision, and the proposed changes would delete the language that is in conflict.

Section 81450 concerns the circumstances, for parties under the Trial Court Act, under which a unit modification petition may or must be filed and the requirements for filing a petition. Two changes are proposed. First, the current language provides that PERB “may” require proof of majority support where a petition seeks to add unrepresented employees to an established unit, but does not specify the conditions under which the proof of support will or should be required. While the Board itself, in State of California, Department of Personnel Administration (1989) PERB Decision No. 776-S, approved the use of a standard whereby support was required where the positions to be added equaled 10 percent or more of the number of employees in the established unit, the Board has never adopted, in case law or regulation, a specific standard. The proposed change would mandate a requirement of majority support whenever a proposed addition of positions to a unit would increase the unit size by ten percent or more. In addition, the proposed amendments would add a requirement of at least thirty percent employee support in circumstances where an incumbent union seeks to add positions to its unit that are also the subject of a petition for representation by another employee organization and the petitioning organization has demonstrated the requisite level of support for its petition (usually majority support). This requirement would be applicable without regard to the effect of the unit modification petition on the size of the established unit, and is consistent with the level of support required for other types of petitions, including interventions on requests for recognition.

Section 91010 defines the term “window period” for purposes of petitions filed under the Court Interpreter Act. Government Code section 6800 reads: “The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.” As presently written, sections 32130(b), 33020, 40130, 51026, 61010, 71026, 81010, and 91010 conflict with this statutory provision, and the proposed changes would delete the language that is in conflict.

Section 91450 concerns the circumstances, for parties under the Trial Court Act, under which a unit modification petition may or must be filed and the requirements for filing a petition. Two changes are proposed. First, the current language provides that PERB “may” require proof of majority support where a petition seeks to add unrepresented employees to an established unit, but does not specify the conditions under which the proof of support will or should be required. While the Board itself, in State of California, Department of Personnel Administration (1989) PERB Decision No. 776-S, approved the use of a standard whereby support was required where the positions to be added equaled 10 percent or more of the number of employees in the established unit, the Board has never adopted, in case law or regulation, a specific standard. The proposed change would mandate a requirement of majority support whenever a proposed addition of positions to a unit would increase the unit size by ten percent or more. In addition, the proposed amendments would add a requirement of at least thirty percent employee support

in circumstances where an incumbent union seeks to add positions to its unit that are also the subject of a petition for representation by another employee organization and the petitioning organization has demonstrated the requisite level of support for its petition (usually majority support). This requirement would be applicable without regard to the effect of the unit modification petition on the size of the established unit, and is consistent with the level of support required for other types of petitions, including interventions on requests for recognition.